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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,297	03/03/2005	Charles E. Wheatley	030180	7134
23596 7590 06/11/2009 QUALCOMM INCORPORATED 5775 MOREHOUSE DR. SAN DIEGO, CA 92121				
EXAMINER MILLS, DONALD L.				
ART UNIT 2416		PAPER NUMBER		
NOTIFICATION DATE 06/11/2009		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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### Office Action Summary

**Application No.**

10/527,297

**Applicant(s)**

WHEATLEY, CHARLES E

**Examiner**

DONALD L. MILLS

**Art Unit**

2416

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27, 41 and 42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-19 and 23-25 is/are allowed.
- 6) ☒ Claim(s) 1-15, 20-22, 26, 27, 41 and 42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Double Patenting*

I. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1, 8, and 41 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 23, and 66 of U.S. Patent No. 7,062,224.

Although the conflicting claims are not identical, they are not patentably distinct from each other because although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 is generic to all that is recited in claim 1 of the patent. In other words, claim 1 is anticipated by claim 1 of the patent. Further claim 1 of the patent recites:

*receiving at least one of a plurality of signal transmissions wherein each of the signal transmissions is associated with a call associated with one of a plurality of remote stations; processing the plurality of received signal transmissions to identify received transmissions that include a discriminant applied by a repeater; and designating each of the plurality of received signal transmissions as being transmitted via the repeater if the received signal transmission includes the discriminant, wherein the monitoring characteristic is selected from a group comprising: a length of the call associated with the designated signal transmissions; a number of calls associated with the designated signal transmissions; a number of dropped calls associated with the designated signal transmissions; a call start time associated with the designated signal transmission; a frame error rate (FER) associated with the designated signal transmission; a receive power associated with the designated signal transmission; and a call type associated with the designated signal transmission. The plurality of signal transmissions wherein each of the signal transmissions is associated with a call associated with one of a*

*plurality of remote stations and processing the plurality of received signal transmissions*

anticipates the claimed "receiving a signal at a wireless receiver, wherein the received signal includes signals originating from a plurality of distinct transmission stations." Because claim 1 of the patent comprises a plurality of received signals from remote stations.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 8, 13, 15, 20-22, 26, 27, 41, and 42 are rejected under 35 U.S.C. 102(e) as being anticipated by Baker et al. (US 2003/0220075 A1), hereinafter referred to as Baker.

The applied reference has a common inventor and assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Regarding claims 1, 8, and 41, Baker discloses a method and system for identifying and monitoring repeater traffic in a code division multiple access system, which comprises:

*Receiving a signal at a wireless receiver, receiving a signal at a wireless receiver, wherein the received signal includes signals originating from a plurality of distinct transmission stations, comparing a predetermined pattern to information derived from the received signal; and determining, wherein the information is based on the signals originating from the plurality of distinct transmission stations, based upon the predetermined pattern substantially matching the information derived from the received signal, that at least a portion of the received signal traveled via a repeater* (Referring to Figures 1, 2A, and 2B, A signal transmission is transmitted from a remote station 126, illustrating only a single remote station but multiple remote stations may be in communication, see paragraph 18, to a repeater 120, where it is received, as shown in blocks 201 and 202. The signal is processed to include a discriminant having a signature associated with the repeater 120, as shown in block 204. The processed signal is then transmitted from the repeater 120 to a base station 104, as shown in block 206. The signal transmitted by the repeater 120 is then received by the base station 104 as shown in block 208. The received signal is then processed to identify transmissions that include the discriminant applied by the repeater 120, as shown in blocks 210 and 211. At any given time, the base station 104 may receive a plurality of signals, potentially from one or more remote stations disposed 112 within its coverage area, and/or one or more remote stations 126 in the coverage area 128 of the repeater 120. Each of the plurality of signals are examined to determine if they include the discriminant (as shown in block 211), and if so, are designated as being transmitted via a repeater 120. Since there are generally a plurality of base stations 104 and can be more than one repeater 120 associated with each base station 104, the discriminant added to the transmitted signal by each repeater 120 can include a particular signature to distinguish the transmission as having

been processed by a particular repeater 120. In such case, the signature is examined and used to determine which repeater 120 the message was transmitted with. This can be accomplished, for example, by comparing the signature of the received signal with a database or list of information relating the signature to the repeater identification. The signature can comprise a frequency (e.g. the frequency of the discriminant identifies the repeater) a time component (e.g. the timing of the discriminant identifies the repeater), or any combination thereof, as further set forth below. If the received signal transmission includes a discriminant, it is designated as having been transmitted via a repeater, as shown in block 212. Such messages may be examined to identify the signature, as shown in block 213. Messaging may be generated to report the signature, along with the call instance that it is associated with, as well as the identifying characteristics of the signal so that the specific repeater can be identified. See paragraph 0040.)

Regarding claim 13, Baker discloses *wherein the information derived from the received signal include time of arrival and relative signal strength for each of a multiplicity of signals from distinct signal sources* (Referring to Figures 2A and 2B, the signature can comprise a frequency (e.g. the frequency of the discriminant identifies the repeater) a time component (e.g. the timing of the discriminant identifies the repeater), or any combination thereof (composite signal), as further set forth below. If the received signal transmission includes a discriminant, it is designated as having been transmitted via a repeater, as shown in block 212. Such messages may be examined to identify the signature, as shown in block 213. Messaging may be generated to report the signature, along with the call instance that it is associated with, as well as the identifying characteristics of the signal so that the specific repeater can be identified. The power of the signal is considered as well. See paragraphs 0040 and 0042.)

Regarding claims 15, 20-22, 26, 27, and 42, Baker discloses *receiving a signal at a wireless receiver, wherein the received signal includes signals originating from a plurality of distinct transmission stations, comparing a predetermined pattern to information derived from the received signal; identifying a pattern within information derived from the received signal, wherein the information is based on the signals originating from the plurality of distinct transmission stations; and storing parameters that describe the identified pattern as a reference repeater signature within the database* (Referring to Figures 2A and 2B, A signal transmission is transmitted from a remote station 126 to a repeater 120, where it is received, as shown in blocks 201 and 202. The signal is processed to include a discriminant having a signature associated with the repeater 120, as shown in block 204. The processed signal is then transmitted from the repeater 120 to a base station 104, as shown in block 206. The signal transmitted by the repeater 120 is then received by the base station 104 as shown in block 208. The received signal is then processed to identify transmissions that include the discriminant applied by the repeater 120, as shown in blocks 210 and 211. Each of the plurality of signals are examined to determine if they include the discriminant (as shown in block 211), and if so, are designated as being transmitted via a repeater 120. Since there are generally a plurality of base stations 104 and can be more than one repeater 120 associated with each base station 104, the discriminant added to the transmitted signal by each repeater 120 can include a particular signature to distinguish the transmission as having been processed by a particular repeater 120. In such case, the signature is examined and used to determine which repeater 120 the message was transmitted with. This can be accomplished, for example, by comparing the signature of the received signal with a database or list of information relating the signature to the repeater identification. See paragraph 0040.)



***Allowable Subject Matter***

5. Claims 16-19 and 23-25 are allowed.
6. Claims 2-7, 9-12, and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten, as well as overcoming the double patenting rejection, in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

7. Applicant's arguments filed 26 March 2009 have been fully considered but they are not persuasive.

**Double Patenting Rejection**

On page 8 of the remarks, regarding claims 1, 8, and 41, the applicant argues the claims are not an obvious variant of the patented claims of U.S. Patent No. 7,062,224 (typographical error in previous office action referring to US PGPUB corrected). The Examiner respectfully disagrees. Although the conflicting claims are not identical, they are not patentably distinct from each other because although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 is generic to all that is recited in claim 1 of the patent. In other words, claim 1 is anticipated by claim 1 of the patent. Further claim 1 of the patent recites: *receiving at least one of a plurality of signal transmissions wherein each of the signal transmissions is associated with a call associated with one of a plurality of remote stations; processing the plurality of received signal transmissions to identify received transmissions that include a discriminant applied by a repeater; and designating each of the plurality of received*

*signal transmissions as being transmitted via the repeater if the received signal transmission includes the discriminant, wherein the monitoring characteristic is selected from a group comprising: a length of the call associated with the designated signal transmissions; a number of calls associated with the designated signal transmissions; a number of dropped calls associated with the designated signal transmissions; a call start time associated with the designated signal transmission; a frame error rate (FER) associated with the designated signal transmission; a receive power associated with the designated signal transmission; and a call type associated with the designated signal transmission. The plurality of signal transmissions wherein each of the signal transmissions is associated with a call associated with one of a plurality of remote stations and processing the plurality of received signal transmissions anticipates the claimed "receiving a signal at a wireless receiver, wherein the received signal includes signals originating from a plurality of distinct transmission stations." Because claim 1 of the patent comprises a plurality of received signals from remote stations.*

Rejection Under 35 USC 102

On page 10 of the remarks, regarding claims 1, 8, and 41, the Applicant argues Baker does not disclose *wherein the information is based on the signals originating from the plurality of distinct transmission stations*. The Examiner respectfully disagrees. The Examiner reads the claim in a broad literal reasonable fashion. A signal transmission is transmitted from a remote station 126, illustrating only a single remote station but multiple remote stations may be in communication, see paragraph 18, to a repeater 120, where it is received, as shown in blocks 201 and 202. The signal is processed to include a discriminant having a signature associated with the repeater 120, as shown in block 204. The processed signal is then transmitted from the repeater

120 to a base station 104, as shown in block 206. The signal transmitted by the repeater 120 is then received by the base station 104 as shown in block 208. The received signal is then processed to identify transmissions that include the discriminant applied by the repeater 120, as shown in blocks 210 and 211, the received and interpreted signal is based on the signal originating from the remote stations. The Applicant appears to be reading limitations from the specification into the claims; however, claims are read merely in light of the specification. The claim recites the term "based on the signals originating" and in Baker the interpreted signals are in fact those that have been transmitted by the remote station. Therefore, the interpreted signals are sufficiently "based on the signals originating."

### *Conclusion*

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DONALD L. MILLS whose telephone number is (571)272-3094. The examiner can normally be reached on 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seena Rao can be reached on 571-272-3174. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Donald L. Mills/  
Primary Examiner, Art Unit 2416  
June 2, 2009